Excellencies, Distinguished Guests, Ladies and Gentlemen,

I would like to echo the sentiments of the speakers and delegates in thanking the IAACA once again for their hospitality and organization of this important event.

The theme of this seminar is Asset Recovery. According to the research conducted by the Stolen Asset Recovery (StAR) initiative, a joint venture between the World Bank Group and the UNODC, as at 2011, US$5 billion was recovered in international asset recovery cases during the past 15 years. This represents only a tiny fraction of the estimated hundreds of billions of dollars that developing countries lost through corruption during the same period[1].
Asset recovery has been an established and fundamental principle for some time in the investigation of corruption and other serious crimes such as drug trafficking. It is now an internationally accepted objective as laid down in Article 51 UNCAC. There is nothing more important than an international commitment to ensure that the corrupt and associated criminals are deprived of the benefits of their crimes. I will not go into the specifics of Article 51, as no doubt in the next two days there will be eminent speakers bringing to the forefront their experiences in this field for us to share. I hope at the end of this seminar we can take home a greater common understanding of this rapidly growing phenomena and a renewed commitment to strive for even greater efforts to prioritize this vital part of criminal investigation.

In Hong Kong there are various legal means whereby we can seek out, freeze and ultimately confiscate criminal assets, and in this regard we are fully compliant with the UNCAC. Specific to corruption is the advantage, particularly, the value of the advantage. It is of primary importance in the fight against corruption that such advantage is recoverable under our anti-bribery laws. This enables the assets to be identified, located and confiscated irrespective of whether the principal whose interest has been compromised is the government in the case of a public servant or the organization for which the corrupt acceptor is an agent. The ICAC is given full powers under the ICAC Ordinance and Prevention of Bribery Ordinance to investigate both public and private sectors’ corruption offences. We also have power to trace the proceeds of corruption and related crime and, where they are identified, to apply to court for orders to freeze these proceeds. Our statutory powers in this regard are set down in the Laws of Hong Kong under the two ordinances I have just mentioned, the Criminal Procedures Ordinance, and the Organized and Serious Crime Ordinance. The Organized and Serious Crimes Ordinance can be invoked by all law enforcement agencies and enables all forms of criminal assets to be frozen and ultimately confiscated. This includes assets that are found or placed in the hands of third parties or hidden in the purchase of valuable assets such as real estate or precious items.

Externally, the Mutual Legal Assistance Ordinance enables us to offer assistance to other jurisdictions with which we have entered into bilateral agreements with Hong Kong and seek such assistance from them. Even for jurisdictions with which there is no agreement, mutual legal assistance may still be rendered on the basis of a mutual undertaking of reciprocity.

Furthermore, in February 2008, in order to comply with UNCAC which had been extended to Hong Kong, we enacted the Mutual Legal Assistance in Criminal Matters (Corruption) Order. This multilateral order extended Mutual Legal Assistance to all State Parties for UNCAC related matters. Any State Party may make a request to Hong Kong pursuant to Articles 54, 55 and 57 of UNCAC, for evidence for use in investigation and prosecution of corruption offences, and for tracing, freezing and recovery of proceeds of crime that are recognised as offences under the UNCAC. In year 2011, the ICAC received seven requests specifically for Mutual Legal Assistance and eight other requests generally under the UNCAC from other jurisdictions, including USA, Poland, Switzerland, India, Malaysia, Cameroon, Egypt, Argentina, Indonesia, Norway and Bangladesh. These requests varied in nature and included the retrieval of bank records, company registration documents, the taking of statements from witnesses, the searching of offices in Hong Kong, and the restrain and confiscation of assets. The ICAC had also made outgoing Mutual Legal Assistance requests with Singapore, New Zealand, Canada, Malaysia and Portugal, for evidence of bank records and sources of fund, as well as requests for the transfer of witnesses to Hong Kong.
Cross-boundary corruption and serious crime needs to be confronted forcefully in our changing world. It is no new revelation that organized criminal syndicates prey on jurisdictional differences and varying judicial practices in order to mask their actions. Cooperation is vital and as such asset recovery must no longer be viewed as an administrative action that needs to be dealt with as a secondary consideration to the more important function of detecting the crime and convicting the criminal. It needs to be viewed with equal commitment and dedication. This is why I say now that full and frank cooperation is so necessary. That cooperation may and in fact will require officers in one jurisdiction working with the same level of enthusiasm and commitment towards tracing assets within their jurisdiction that are generated from crimes from other places, possibly on the other side of the world. Even though the actual crime may not impact on their own jurisdiction and no criminals brought to book there, they need now, in our changing times, to show the same level of commitment that would arise, as if the crimes were committed within their jurisdiction. This can be a hard sell; especially for those from developing countries where they are expected to provide resources and expertise in tracking criminal assets within their country solely for the benefit of other country. We have learned from experience that an ethos of mutual support is the key to success. Here I would like to make reference to the case of AO Man-long, a former public official in Macao, who was originally sentenced to 27 years for corruption in Macao and made subject to a confiscation order in the sum of a very substantial amount. Just a few weeks ago on 1\textsuperscript{st} June 2012, he was further sentenced to 29 years imprisonment, to run concurrently with his earlier sentence, for separate corruption and money laundering offences. In sentencing AO, the Honorary Judge Sam Hou-fai said “The amount of bribe money he received is far more than the amount supported by the evidence… so large that no other officials involved in corruption in Asia and other countries can compare”.

AO was the Secretary of Transport and Public Works in Macao. In 2008, the ICAC in liaison with Hong Kong’s Joint Financial Investigation Unit picked up numerous suspicious transactions in bank accounts operated by AO’s relatives that were ultimately traced back to him. Resulting from this was a prolonged investigation into a complex corruption syndicate by the Macao CCAC, and subsequent prosecution of the very corrupt and the bribers by the Macao Procuratorate. AO, the central corrupt official, upon convictions, was found to be in possession and control of no less than HK$800 million (approximately US$103 million) in total. The trail of suspicious transactions indicated that a significant amount of his corrupt assets had been deposited into bank accounts in Hong Kong. Even though there was no formal Mutual Legal Assistance agreement between Hong Kong and Macao, both being Special Administrative Regions of the PRC, ICAC were still able to assist by relying on the available legal sanction of freezing suspicious funds generated anywhere in the world. Having successfully frozen the asset, we managed to overcome legal obstacles to confiscation by assisting Macao to bring civil forfeiture proceedings in Hong Kong. Eventually more than HK$330 million (approximately US$40 million) was recovered and returned to Macao. During the course of the asset tracing exercise we discovered that substantial funds had been sent to the United Kingdom and used to purchase a property. This disclosed an offence of money laundering in Hong Kong and therefore we invoked Mutual Legal Assistance between Hong Kong and the UK as a means of freezing any potential sale of this property. Eventually the property was sold under a court order and the funds are now banked in the UK awaiting repatriation to Macao.

This is one of the successful cases of cooperation between ICAC and other jurisdictions when asset recovery was involved. All assets have been or are currently destined to be returned to Macao. We could have taken the attitude that it is not our
concern and simply carried out the minimal requirements of informing the Macao authorities and then sitting back and giving a minimal response, especially as this specific law germane to asset confiscation was not as such available between the two jurisdictions. However we took up this challenge seriously; officers from Hong Kong and Macao worked tirelessly and enthusiastically, and, as a result, AO and his corrupt associates were deprived of vast profits from his criminal enterprise.

This case will be explained in more detail in one of the workshops by Mr S. K CHOI, an Assistant Director of the ICAC, who was personally involved in this case for some years. My reason for citing this case at this stage is to underscore the need for full cooperation, and that full cooperation can only come from the dedicated attitudes of investigators, even though the results might not concern their own jurisdiction. It equally is essential for governments to allocate sufficient resources for the purpose of asset recovery, even though the costs might not be covered because those assets are repatriated to the victim jurisdictions. As I have said, this can be a hard sell for developing and poorly resourced jurisdictions. Many of these jurisdictions could be reluctant to sign up and ratify the UNCAC purely on the basis that the cost in resources and the need to have professional investigators available to take on such investigations is simply too much for them.

Ladies and gentlemen, this could be dangerous to our cause if it is allowed to happen. In this regard it has been a long held belief that the United Nations can increase its systems of assistance to such jurisdictions to much higher levels. The United Nation’s current arrangements for assistance should, in my view, be significantly enhanced to provide more professional support to such jurisdictions in the form of trained investigators being put on the ground, and, if necessary, having them paid for in part from any recovered assets. The objective in asset confiscation, remember, is not to create income for a jurisdiction, but to ensure that such assets are taken away from the corrupt who generate them. Of course, any assets that are traceable to losses incurred by innocent victims should be put toward restitution to them, but where criminal assets are generated that would fall directly to government, such as in corruption related money laundering or drug, firearms and human trafficking, then it would seem both appropriate and expedient in our international quest for depriving criminals of unlawful assets that those assets are directed towards the problem itself. Such UN professionals on the ground in a jurisdiction could have the dual purpose of assisting the investigation and providing the necessary training to local law enforcement officers.

That brings me onto another core message that I would wish to share with you. In a modern world where funds can be transferred instantaneously around the world and its subsequent transformation into hidden assets, the detection, tracing and finally securing the funds in question becomes increasingly essential. Unique knowledge, skill, capacity and resources are therefore required to identify, trace, restrain, confiscate, and eventually return these assets. The current environment makes the successful recovery of stolen assets very difficult. In the ICAC we are rising to this challenge by enhancing our continuous training programmes to our frontline investigators, either internally or from external professional organizations or overseas authorities. Such training is twofold. Firstly it is aimed at enhancing the investigators’ ability to detect and track suspicious fund flow; ability to conduct effective investigations, often against suspects aided by some of the best professionals in the legal and financial arenas; and ability to cross various legal and procedural hurdles in the subsequent stages, namely restraining, confiscation and return of assets. Secondly, cultivating and nurturing that investigative ethos that puts the recovery of corruption proceeds and criminal assets on par with the detection of the crime itself. Through arranging our officers to attend international courses, symposiums, seminars and conferences and organizing
international courses, symposiums, seminars and conferences, and organizing attachments to other law enforcement agencies for experience sharing, we expose them to the wider problems and consequently engender in them the will to look for the greater picture and the importance of asset recovery. The more we prove that stockpiling criminal proceeds is no longer worth it, and wherever they are kept, such assets are and will forever remain at a high risk of being taken, then the thinking that a few years behind bars is worth it will no longer be so prevalent.

In Hong Kong, specifically to make that concept more a reality, the ICAC has substantially enhanced its forensic accounting capabilities. Our Forensic Accountancy Group, created in August 2011, comprises professional accountants and other staff qualified and trained in forensic accountancy. This group is tasked with projects that include asset and fund tracing; analysis and interpretation of financial data; preparation of financial profiles; giving professional advice during operations in the search and seizure of documents; examining accounting records to establish their evidential value, and the interviewing of bankers, accountants and other professionals from within the financial and securities industries. With the advance in information technology and the emergence of rapid changes in the financial markets, corruption related financial fraud cases are becoming more complex and multi-jurisdictional. Often these cases are facilitated by professionals where multi-layers of fund flows, large numbers of parties, including offshore companies, and innovative and aggressive accounting techniques are involved. That is why forensic accountancy has become an integral part of our investigation techniques.

My fellow colleagues will, in their presentations in tomorrow’s workshops, elaborate on much of what I have eluded to today.

To recap, in order to succeed, we need a strong legislation that is capable of setting out the criminality and providing the powers necessary for the international asset tracing and forfeiture. We need to develop the ethos that the tracing of such assets is the duty and commitment of all investigators in this field who should not be tied conceptually to thinking that the assets generated from another jurisdiction are not of such importance to the local corruption or criminal problems. Each jurisdiction should take responsibility by deploying professionally trained officers and ensuring that it has the necessary legislation and Mutual Legal Assistance agreements to enable them to do their job. Developing jurisdictions need equally to step up so as to avoid these jurisdictions becoming the nerve centres for the laundering of criminal assets. In this regard, the United Nations, in my view, could and should consider greater assistance.

Thank you.
